unnecessary to protect the bank's interest; nor was it made in connection with an inquiry into the act or a prosecution thereof. This abuse of privilege, though unintentional, renders the defendant liable.

MUNICIPAL CORPORATIONS — POLICE POWER — VALIDITY OF ORDINANCE PROHIBITING CIRCULATION OF A NEWSPAPER. — The municipal council of North Bergen, N. J., passed an ordinance forbidding the circulation within its limits of a German newspaper. The enforcement of the ordinance was restrained until final hearing, and the defendant appealed. *Held*, that the restraint be continued. *New Yorker Staats-Zeitung* v. *Nolan*, 105 Atl. 72 (N. J.).

An ordinance passed under the general exercise of police power must be reasonable; that is, it must tend in an impartial manner to promote public health, morals, or welfare by methods that are adapted to the purpose and are not unduly oppressive. *Zion* v. *Behrens*, 262 Ill. 510, 104 N. E. 836; *State* v. *Starkey*, 112 Me. 8, 90 Atl. 431; *Tolliver* v. *Blizzard*, 143 Ky. 773, 137 S. W. 509. Thus ordinances requiring bicycles to carry lights after dark, or forbidding automobiles to run on country roads after sunset, are valid. *In re Berry*, 147 Cal. 523, 82 Pac. 44; *City of Des Moines* v. *Keller*, 116 Iowa, 648, 88 N. W. 827. But an ordinance forbidding vehicles other than those propelled by animals to use the streets is void. *Bogue* v. *Bennett*, 156 Ind. 478, 60 N. E. 143. So also an ordinance regulating laundries was held invalid because it tended to discriminate against Chinamen *qua* Chinamen. *Yick Wo* v. *Hopkins*, 118 U. S. 356. Recently the New Jersey court seems to have overlooked such discrimination in upholding an ordinance forbidding aliens to operate "jitneys." *Morin* v. *Nunan*, 103 Atl. 378 (N. J.). In the principal case, however, it properly forbids an unreasonable personal discrimination.

NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — JUDGMENT NOTWITHSTANDING THE VERDICT. — The plaintiff in his statement of claim alleged that he was a customer of the defendant bank, that acting under the advice of its manager he made an investment in a security which turned out to be worthless, and that the advice was negligently given. The defendant denied that the advice was given negligently, and denied that the manager was acting within the scope of his authority. In answer to questions the jury found that the advice was negligently given by the manager and that he was acting within his authority in giving the advice; and they gave a verdict for the plaintiff. The defendant appealed to the Court of Appeal, asking for judgment or a new trial, on the ground (*inter alia*) that there was no evidence that the manager in giving the advice was acting within the scope of his authority. This point was not made by the defendant at the trial. The Court of Appeal decided that there was in fact no evidence of the manager's authority, and ordered judgment to be entered for the defendant. *Held*, that the order should be affirmed. *Banbury* v. *Bank of Montreal*, [1918] A. C. 626.

For a discussion of this case, see NOTES, page 711.

PRINCIPAL AND SURETY — ACCELERATION OF MATURITY — DUTY TO DISCLOSE — DISCHARGE OF SURETY. — By an agreement between the plaintiff payee and the maker all notes were to become due four months after default on any one. The defendant refused to go surety for a certain amount on one note, but, being unaware of the agreement accelerating maturity, consented to and did sign as surety, at the maker's request, a series of notes for a similar amount. The plaintiff payee had notice of the defendant surety's refusal, but did not disclose the agreement. *Held*, that defendant is liable to the payee on the original due dates. *Hatfield* v. *Jackway*, 170 N. W. 181 (Neb.).

If, at the inception of the relation, the creditor has knowledge of material facts, unknown to the surety, increasing the ordinary suretyship risks, a failure to disclose them will discharge the surety. *Damon* v. *Empire State Surety Co.*,

161 App. Div. (N. Y.) 875, 146 N. Y. Supp. 996; *First National Bank* v. *Clark*, 59 Colo. 455, 149 Pac. 612; *Bidcock* v. *Bishop*, 3 Barn. & Cr. 605. See *Warren* v. *Branch*, 15 W. Va. 21. The mere non-disclosure is sufficient; the creditor need not have a fraudulent motive. *Railton* v. *Matthews*, 10 Cl. & Fin. 934; *Sooy* v. *State*, 39 N. J. L. 135; *Damon* v. *Empire State Surety Co.*, *supra*. This defense is generally founded on fraud. *Bellevue Bldg. & Loan Ass'n* v. *Jeckel*, 104 Ky. 159, 46 S. W. 482; *Lee* v. *Jones*, 17 C. B. (N. S.) 482; *Damon* v. *Empire State Surety Co.*, *supra*; *Sooy* v. *State*, *supra*. See 1 STORY, EQUITY JURISPRUDENCE, 14 ed., § 305. It is submitted, however, that the defense should be variation of risk which is based on equitable grounds. See 16 HARV. L. REV. 511. Thus, if the creditor has knowledge of facts which increase the surety's risk and also knows or has reasonable cause to believe that the surety is unaware thereof, then a duty to disclose should be imposed on the creditor. In the principal case, the agreement accelerating maturity imposed a heavier burden on the principal which, since it might interfere with the enforcement of the surety's rights, was a variation of the surety's risk. The defendant meant to guard against this by refusing to sign one note for the full amount, and as the creditor had notice, he was under a duty to disclose.

PROFITS À PRENDRE — WHAT CONSTITUTES AN ABANDONMENT. — The owner of a farm conveyed part thereof, a slate quarry, to the predecessor of the plaintiff, reserving for himself, his heirs, and assigns the privilege of removing all waste slate resulting from the operation of the quarry. Thereafter, the owner conveyed the remainder to the defendant's predecessor, but reserved no right of way, thereby leaving himself without means of access to the quarry. For thirty-three years neither the grantor nor his heirs exercised the right to remove the slate, after which period the heirs granted all rights under the reservation to the defendant. The plaintiff seeks to restrain the defendant from entering his premises to remove the slate. *Held*, that the injunction be granted. *Mathews Slate Co.* v. *Advance Ind. Supply Co.*, 172 N. Y. Supp. 830.

Mere nonuser, however long continued, cannot operate as an abandonment of an easement created by grant. *Arnold* v. *Stevens*, 24 Pick. (Mass.) 106; *Welsh* v. *Taylor*, 134 N. Y. 450, 33 N. E. 896; WASHBURN, EASEMENTS, 4 ed., 717. But it has been held that where the easement has been acquired by prescription, nonuser without more for the statutory period will extinguish the right. *Browne* v. *Baltimore M. E. Church*, 37 Md. 108. See also *Sayles* v. *Hastings*, 22 N. Y. 217, 224. *Jewett* v. *Jewett*, 16 Barb. (N. Y.) 150, 157. And this distinction has been adopted by statute. CAL. CIV. CODE, § 811; OKLA. REV. LAWS, 1910, § 6633. The distinction seems unsound, since prescription is based upon the presumption of a grant, and it has been disregarded in many cases. See *Ward* v. *Ward*, 7 Exch. 838; *Veghte* v. *Raritan Water Power Co.*, 19 N. J. Eq. 142, 156. But where nonuser is accompanied by adverse possession for the statutory period, it is clear that in both cases the right is barred. *Horner* v. *Stilwell*, 35 N. J. L. 307; *Woodruff* v. *Paddock*, 130 N. Y. 618, 29 N. E. 1021; *McKinney* v. *Lanning*, 139 Ind. 170, 38 N. E. 601. Also, where nonuser is coupled with some act showing clearly the intent to abandon the easement, it will be extinguished. *Snell* v. *Levitt*, 110 N. Y. 595, 18 N. E. 370; *Vogler* v. *Geiss*, 51 Md. 407; *Pope* v. *Devereux*, 5 Gray (Mass.) 409. The duration of the nonuser, however, is only important in that it tends to strengthen the presumption of an abandonment. *Queen* v. *Chorley*. 12 Q. B. 515; *Canning* v. *Andrews*, 123 Mass. 155. In the principal case the nonuser extended through a period of thirty-three years, and the grantor by alienating the farm without reserving for himself means of access to the quarry, showed clearly an intent to abandon the right. Though a profit and not an easement was involved, it made no difference in the application of the above principles and the court correctly held that the profit had been abandoned.